

What to expect in Employment Law in 2024



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Last year, the Government made major decisions regarding post-Brexit education reform and backed an unusually high number of private members' bills. As a result, 2024 looks set to be a year of significant change to employment legislations and reform. Furthermore, a possible general election and change of Government could see further employment law shake ups.

This briefing paper outlines potential 2024 changes that universities need to be aware of, including:

1. Employment Relations (Flexible Working) Act 2023
2. The Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023
3. The Protection from Redundancy (Pregnancy and Family Leave) Act 2023
4. The Workers (Predictable Terms and Conditions) Act 2023
5. Carer's Leave Regulations 2024
6. The Worker Protection (Amendment of the Equality Act 2010) Bill
7. Statutory Pay Entitlements
8. Future Government reviews.

We recommend UK universities familiarise themselves with new requirements, make relevant changes to policies and processes, communicate these changes, and consider how they will implement and assess their impact and effectiveness.

SUMS is a membership-based higher education consultancy, a registered charity and not-for-profit organisation that provides expert consulting to universities across all professional service areas. Here, Emma Ogden, SUMS Consultant, shares insight on what the Employment Law landscape might look like in 2024.

This briefing paper is provided for information purposes only and is no substitute for, and should not be interpreted as, legal advice.

1. Employment Relations (Flexible Working) Act 2023

This new act is due to come into force on 6 April 2024, and will have the following changes:

1. Employees will not need any period of service to make a flexible working request
2. Removing the 26-week qualifying period before employees can request flexible working, making it a day-one right
3. Requiring employers to consult with employees, as a means of exploring options, before rejecting a flexible working request
4. Allowing employees to make two flexible working requests in any 12-month period
5. Requiring employers to respond to requests within two months
6. Removing the requirement for employees to set out how the effects of their flexible working request might be dealt with by their employer.

Employers will, however, still be able to refuse a flexible working request on one of six statutory grounds. With many institutions now operating hybrid working models, the impact of this change will perhaps be less substantial than it might previously have been, although it will vary by job role. While this change in legislation may raise the prominence of the right to request flexible working, a recent survey¹ found that 70% were unaware that they would be given the right to request flexible working from day-one.

Where a request cannot be considered, alternative options are required, with the aim of encouraging mutually acceptable solutions. Institutions will need to pay particular care to show that there is objective justification for refusing a request.

It is recommended that institutions adopt a flexible mindset, supported and informed by appropriate policies, recruitment, and workforce planning processes.

2. The Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023

The Retained EU Law (Revocation and Reform) Bill originally suggested that all retained EU law would be automatically revoked at the end of 2023, unless it was expressly transferred into UK law. However, in June last year the Government reversed this position and confirmed that only expressly identified laws would be revoked. This means that EU derived employment law will remain in place. Some changes which have come into effect however are covered through the Employment Rights (Amendment, Revocation and Transitional Provision) Regulations 2023.

¹ The findings of this survey are available [here](#).

These regulations attempt to streamline and simplify the law with respect to holiday pay and annual leave, working time and rights under the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) 2006 and considers retained EU law following Brexit.

1. The regulations will make rolled up holiday pay (at an accrual rate of 12.07%) lawful for workers with irregular hours or part-year workers. This replaces the previous reference period model, which was not considered to be practical in cases where hours and periods was so variable. Instead, employers will have discretion to either consider the reference period or apply the 12.07% rate.
2. Additionally, the Government is giving effect to current EU case law which permits workers to carry over annual leave entitlements if they are unable to take it due to family or sickness leave. Additionally, there would be a right to carry over annual leave where an employer fails to encourage workers to take it (or does not give them a reasonable opportunity to take it).
3. While the requirement has been removed for employers to keep records relating to working time hours and rest periods, they will need to demonstrate compliance with the regulations in other ways.
4. The TUPE transfer process will be streamlined to mean that businesses with either fewer than 50 employees or transfers involving less than 10 employees will only need to consult with employees directly and not via collective consultation.

It is uncertain how the status of EU case law will now be interpreted by UK courts, which creates a risk that there will be some ambiguity for employers as to their legal obligations.

Institutions are advised to be aware of these new changes, particularly to holiday pay. Where overtime or other allowances are paid, employers are advised to factor this into holiday payments. Furthermore, it will be important to remind workers to use up their holiday entitlement within the year.

3. The Protection from Redundancy (Pregnancy and Family Leave) Act 2023

Also coming into force on 6 April, this new Protection will extend existing arrangements of offering a suitable alternative role (if any) in preference for parents on maternity, adoption or shared parental leave to:

1. Pregnant employees from the time they inform their employer of their pregnancy
2. Those on family leave for 18 months from the expected week of childbirth, the day on which the childbirth occurs or the date of birth / date of placement.

This also applies to those on shared parental leave, provided that the parent takes a period of at least six weeks leave.

Institutions who are planning any redundancy exercises after this Act comes into force in April should take note of this change to ensure suitable alternative roles are identified and offered to this extended category of employees.

4. The Workers (Predictable Terms and Conditions) Act 2023

Expected to come into effect in September 2024, this new Act is aimed at increasing certainty for casual workers. It will introduce a statutory right for workers to request a more predictable working pattern relating to their hours, days, times, and length of contract. Employers will have a month to respond and will retain the right to reject the requests.

Given the wide-ranging wording in the Act, other contracts may be included, such as fixed-term contracts under 12 months.

5. Carer's Leave Regulations 2024

Due to come into force on 6 April, the new Regulations will give a statutory right for employees to have a week's unpaid leave to care for a dependent with long-term needs². Further details of entitlement include:

1. It will be a day-one right with no minimum service requirement to qualify
2. To be eligible, employees must have a dependent with a care need and be taking the leave to provide or arrange care for that dependent
3. Leave may be taken in full or half days in blocks of one week and may be either consecutive or non-consecutive
4. Employees must give notice of their wish to take leave. While evidence is not required in relation to the request, nor can it be declined, employers may postpone it.

While many institutions have local policies and procedures regarding discretionary time off work, it is recommended that these are reviewed to ensure they define where legislation provides a statutory right. Many employees are likely to have caring responsibilities, even if this has not been expressly disclosed. A system may also be required to track the number of days taken and ensure that managers are aware of this new right.

² 'Long-term needs' is defined as (a) anyone with a condition that meets the definition of disability under the Equality Act 2010, (b) illness or injury (physical or mental) that requires / is likely to require care for more than three months, or (c) old age.

6. The Worker Protection Bill (Amendment of the Equality Act 2010)

Coming into force on 26 October 2024, an amendment to the Equality Act 2010 will introduce a duty on employers to take “reasonable steps” to prevent sexual harassment of their employees. Ahead of the commencement date, the Equality and Human Rights Commission (EHRC) will publish a new statutory Code of Practice which will supplement the legislation and provide guidance on what proactive steps employers are expected to take. Employer liability for third party harassment is not being introduced at this stage.

The aim of this legislation is to place greater responsibility on employers to make their workplaces safer for their staff. Simply having anti-harassment policies and providing routine training is likely to be insufficient, and clear policies for raising and dealing with concerns and ensuring alignment with the EHRC guidance will be critical. Where sexual harassment cases reach an employment tribunal, they will have the power to uplift compensation by up to 25% of the employer is found to have breached the duty.

7. Statutory Pay Entitlements

The Department of Work and Pensions have confirmed the new pay rates³, which will come into effect on 1 April 2024. Notably, the National Living Wage will increase from £10.42 to £11.44. This will narrow the gap between the legal minimum and ‘real’ living wage.

8. Future Government Reviews

Other possible updates, previously highlighted in the [SUMS 2023 Employment Law update](#) may yet reemerge, including:

1. A review of whistleblowing with the aim of examining its effectiveness in providing workers with a route to raise concerns. It is possible that the review could see an overhaul of the current approach.
2. Fire and rehire (or dismissal and re-engagement). The draft statutory Code of Practice has not had any further update but is expected to re-emerge this year.
3. The Government is expected to pass a Data Protection and Digital Information Bill which aims to maintain data protection adequacy, while relaxing a few areas that the EU currently outline (such as a less expansive definition of ‘personal data’ and a new ability to ignore vexatious / excessive subject access requests).

³ A copy of the new rates are available [here](#).

4. A right to neonatal leave is due for consideration in 2025 and a possible review of a private Bill being put forward by a MP to introduce a statutory time off for fertility treatment. Further information about this can be found in a previous SUMS thought piece.

It is worth noting that the next UK general election is widely expected this year. The employment law landscape under a Labour government may look very different. If elected, Labour have promised an Employment Rights Bill to introduce reforms within the first 100 days, on aspects such as rights not to be unfairly dismissed, a ban on zero-hours contracts, strengthening of harassment laws, strengthened trade union rights and the introduction of ethnicity and pay gap reporting.

SUMS Recommendations

We recommend that universities plan for possible new legislative and regulatory change by:

1. Reviewing family friendly and age-related policies (particularly around carers leave and fertility-related guidance) and providing improved guidance and support
2. Ensuring that all staff, leadership, and management teams are familiar with legislative changes and understand the implications and expected benefits
3. Ensuring a proactive response; where consultations are ongoing or proposed, institutions may wish to get ahead by reviewing procedures, ensuring effective, open, and supportive communication channels are in place and engaging with staff
4. Identifying where practical interventions are needed, as part of a business and workforce planning cycle
5. Planning implementation and impact assessments.

With expertise covering almost all areas involved in Human Resources, policy and employment law, the team at SUMS Consulting would be happy to help in supporting conversations further.

If you wish to discuss further or need any further information, please contact Emma on e.l.ogden@reading.ac.uk